

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE:

AVERY K. DICKENS

Debtor

Case No. 12-41930
Chapter 7

**TRUSTEE'S MOTION TO SELL REAL PROPERTY INTERESTS –
PAD SITE, OAKDALE, LOUISIANA PURSUANT TO 11 U.S.C. § 363**

NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN TWENTY-ONE (21) DAYS FROM DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

COMES NOW Mark A. Weisbart, Chapter 7 Trustee (“Trustee”) in the above-referenced bankruptcy case, and files this Motion to Sell Real Property Interests – Pad Site, Oakdale, Louisiana Pursuant to 11 U.S.C. § 363 (the “Motion”) seeking authorization to sell certain real property interests in relation to an undeveloped lot located along Highway 167 in Oakdale, Allen Parish, Louisiana, and in support hereof, would show the Court the following:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This matter constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (A), (K), (N) and (O).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

FACTUAL AND PROCEDURAL BACKGROUND

3. On July 18, 2012 (the “Petition Date”), Avery K. Dickens (the “Debtor”) filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). By order entered on February 19, 2013, the Court converted this case to a

case under Chapter 7. Thereafter, Trustee was appointed Chapter 7 Trustee.

4. The property interests to be sold consists any and all rights and interests in and to an undeveloped pad site located within a strip shopping center along Highway 165 in Oakdale, Allen Parish, Louisiana (the “Real Property”), including, without limitation, the right to redeem the Real Property pursuant to applicable Louisiana law (collectively, the “Property Interests”). The legal description to the Real Property is attached hereto as Exhibit “A”.

5. The Trustee has recently received an offer to purchase the estate’s interests in the Real Property and the Property Interests from Waynon Keith and Francis Thompson Richardson (the “Buyers”) for the sum of \$20,000.00 (the “Purchase Price”) as set forth in a Contract to Buy and Sell (the “Contract”). A copy of the Contract is attached hereto as Exhibit “B”.

6. The Trustee believes the Purchase Price represents the fair market value of the Real Property and Property Interests and that the proposed sale is in the best interest of the estate. The Real Property has been marketed by the Trustee’s realtor, Bobby Abrusley with Jim Davidson Realty (the “Realtor”). Realtor was previously approved by Court order dated June 3, 2013, to market property in Oakdale, Louisiana.

7. Trustee requests Court authorization to sell the Real Property and Property Interests pursuant to 11 U.S.C. §363 to the Buyer for \$20,000.00 cash to seller and from the sale proceeds allow the Trustee to pay a 6% realtor’s commission. Further, the Trustee has been informed by the Realtor that the Real Property may have been foreclosed during the bankruptcy by the local taxing authorities. Trustee understands that under Louisiana law the Real Property can be redeemed by payment of back taxes, plus interest. Under the Contract, Buyers are obligated to pay any amounts necessary to redeem the Real Property and any other taxes against the property.

8. Trustee requests that (i) the sale be made “as is, where is” without any representations or warranties as to ownership, title, right, use, or interest in or to the Real Property or any Property Interests that exist with regard to same; and (ii) that the deed conveying the Real Property shall be a special warranty or quitclaim deed, and that no obligation, warranty or personal liability be placed on Trustee in any capacity, other than as Trustee of this estate.

9. Trustee also requests that this Court waive the 14-day stay of the sale order as provided in Bankruptcy Rule 6004(h). Finally, the Trustee requests that in the event he receives, in his sole discretion, a higher and better offer prior to closing or the Buyer does not close the sale of the Real Property and Property Interests within thirty (30) days of the entry of this Order, then the Trustee is authorized, in his discretion, to sell the Real Property and Property Interests to any third party who pays more than \$20,000.00 to purchase same on similar terms to those set forth in the Motion.

REQUESTED RELIEF

A. SALE OF ESTATE’S INTEREST IN PROPERTY PURSUANT TO SECTION 363(b)

10. The Court may authorize the Trustee to sell property of the estate other than in the ordinary course of business pursuant to Section 363(b) of the Bankruptcy Code; *see also* Rule 6004 of the Federal Rules of Bankruptcy Procedure. The Fifth Circuit requires that the Trustee demonstrate a “sound business reason” for selling property pursuant to Section 363. *See In re Continental Airlines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) (*citing In re Lionel Corp.*, 722 F.2d 1063, 1070-71 (2d Cir. 1983)). Whether the Trustee has articulated a sufficient business reason to approve a sale of assets depends on the facts of the case. The Court may consider (i) whether the asset is increasing or decreasing in value; (ii) whether the proceeds to be obtained from the sale of the assets represent the fair value of such assets; and (iii) the effect such sale

may have on future plans of reorganization.¹ *In re Continental Airlines*, 780 F.2d at 1226; *In re Lionel Corp.*, 722 F.2d at 1071.

11. Upon information and belief, the Property is not increasing in value. The Trustee has employed the Realtor to market and sell the Real Property. The offer is the current best “as is” offer received by the Trustee and was subject to arms length negotiations. The Trustee believes the proposed purchase price represents the fair value of the Property. The Trustee believes the proposed sale is in the best interest of the estate. Thus, the Trustee seeks authorization to sell the Real Property and Property Interests pursuant to Section 363(b).

12. The property is being sold subject to all liens, claims and encumbrances. Trustee is not aware of any liens against the property.

WHEREFORE, Trustee prays that the Court enter an order pursuant to 11 U.S.C. § 363(b) and (f) authorizing him to (i) sell the Real Property and Property Interests to Buyers pursuant to the terms of the Contract and (ii) pay the Realtor a 6% realtor’s commission. The Trustee prays that this Court will waive the 14-day stay of the sale order as provided in Bankruptcy Rule 6004(h). The Trustee further prays for the Court to grant him such other and further relief to which he is justly entitled.

Respectfully submitted,

/s/ Mark A. Weisbart
Mark A. Weisbart
Texas Bar No. 21102650
THE LAW OFFICE OF MARK A. WEISBART
12770 Coit Road, Suite 541
Dallas, Texas 75251
(972) 628-3694 Phone
(972) 628-3687 Fax
weisbartm@earthlink.net

COUNSEL FOR CHAPTER 7 TRUSTEE

¹ This factor is neither relevant nor applicable in this case.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing instrument was served on the attached mailing matrix either through the Court's electronic notification system as permitted by Appendix 5005 III. E. to the Local Rules of the U.S. Bankruptcy Court for the Eastern District of Texas, or by first class United States Mail, postage prepaid no later than this the 16th day of January, 2015.

/s/ Mark A. Weisbart

Mark A. Weisbart

Allen Parish Assessor
P.O. Box 218
Oberlin, Louisiana 70655

[Handwritten signature]

2015 PARCEL LISTING

OWNER
CITY OF OAKDALE
(MIDWEST MANAGEMENT BANK)
PO BOX 728
OAKDALE, LA 71463-0000

Avery Dickens

PARCEL# 0540147500

Parcel Number	Parcel Type	Ward	Physical Address	Map Number
0540147500	ADJUDICATED P	WARD 5 O		163300202

ITEMS- PARCEL#0540147500

Description	Assessed Value	Homestead Value	Market Value	Units	HS Units
1 URBAN LOT	6,250		62,500	1.00	0.00
Item Totals	6,250		62,500	1.00	0.00

LEGAL DESCRIPTION- PARCEL#0540147500

COMM. AT THE SW/COR OF NE/4, 16-3-3, TH E ALONG THE S/LINE OF NE/4 OF NE/4 726.5 FT TO THE W/R/W/L OF U.S. HWY. 165; TH NE'ERLY ALONG THE W/R/W/L OF U.S. HWY. 165 A DIST. OF 529.55 FT TO POB; TH N 80 DEG 37 MIN W 144.1 FT; TH N 23 DEG 08 MIN E 154.4 FT; TH S 66 DEG 52 MIN E 140 FT TO THE W/R/W/L OF U.S. HWY. 165; TH SE'ERLY ALONG SAID R/W/L TO POB.
INCLUDED IN THIS DESCRIPTION IS A 575 SQ. FT. TRACT OF LAND LEASED TO HIBERNIA NATIONAL BANK WHICH IOS LEGALLY DESCRIBED AS: BEG. AT A PT IN THE NE/4 OF NE/4 OF 16-3-3, SAID PT BEING N 23 DEG 08 MIN E A DIST. OF 528.75 FT ALONG THE W/R/W/L OF U.S. HWY 165 FROM THE S/LINE OF SAID NE/4 OF NE/4 & N 80 DEG 37 MIN W A DIST. OF 111.17 FT FROM SAID R/W/L; TH N 80 DEG 37 MIN W A DIST OF 32.93 FT; TH N 23 DEG 08 MIN E PARALLEL WITH THE AFORESAID W/R/W/L A DIST. OF 36 FT; TH S 25 DEG 29 MIN 37 SEC E A DIST OF 42.62 FT. (415-702

DEEDS- PARCEL#0540147500

Type	Deed Number	Recorded	Book	Page	Sales Price
Cash Warranty Deed	422,449	01/24/2003	415	702	62,500.00
Parish Tax Deed	476,259	06/20/2013	496	851	930.84
City Tax Deed	480,719	06/18/2014	505	525	318.91

OWNERSHIP INFORMATION

HS	Owner Name	Primary	% Owned	% Tax	From	To
NO	CITY OF OAKDALE	YES	100.0000	100.0000	06/18/2014	
NO	MIDWEST MANAGEMENT BANK	YES	100.0000	100.0000	06/20/2013	06/18/2014
NO	DICKENS, AVERY KONRAD	YES	100.0000	100.0000	01/24/2003	06/20/2013
NO	MID-SOUTH DEVELOPMENT CO. INC.	YES	100.0000	100.0000	04/25/2003	01/24/2003

TAX REGIONS- PARCEL#0540147500

Tax Region	Value Applied
Oakdale	6,250
Ward 5 Oakdale	6,250

144
145

PARISH TAXES

Millage	Mills	Taxpayer	Homestead
PARISH IN	56.47	352.94	0.00
REC DIST # 1 (OAK) (1020 007)	3.10	19.38	0.00
ROAD DIST #5	13.99	87.44	0.00
SCH DIST #5	38.56	241.00	0.00
SUB RD 5A (1020 024)	2.79	17.44	0.00
Totals	114.91	718.20	0.00

144
140
154
144

CONTRACT TO BUY AND SELL

This agreement to buy and sell entered into by and between Avery and Paula Dickens represented by Bankruptcy Trustee, Mark Weisbart, hereafter referred to as the Sellers, And Waynon Keith and Francis Thompson Richardson referred to as the Buyers.

Witnesseth: For the consideration and on the terms hereinafter set forth, the Seller agrees to sell and the Buyer agrees to purchase the following described property: Parcel #0540147500, Description Attached

The consideration for this sale is to be the sum of \$20,000 Dollars and payable as follows: The Buyer has this day paid a deposit of (\$1,000.00) Dollars to be applied to the purchase price; the balance to be paid upon execution of a deed to the property.

The deposit shall apply on the purchase price and is not to be construed as earnest money, but is to be considered as part payment for the above described property.

The Buyer shall have a period of 30 days after the date of this agreement within which to secure a legal title opinion to the property. If title is found to be merchantable, the deed is to be executed on or before February 15th, 2015. In the event title is found to be defective, the Seller will have a reasonable time, not to exceed 30 days, to perform the necessary curative work to deliver a clear title. If the title is not made acceptable within such 30 day period, the Seller will refund the deposit to the Buyer and the contract will be null and void.

In the event Seller defaults, Buyer shall have the right either to demand the return of his deposit in full, plus an equal amount to be paid as penalty by the Seller, or Buyer may demand performance and/or damages, at his option.

In the event the Buyer defaults, Seller shall have the right to declare the deposit forfeited, without formality beyond tender of title to Buyer, or Seller may demand specific performance and/or damages, at his option.

SPECIAL PROVISIONS:

Done and signed this 9th day of January, 2015.

Sellers: [Signature] Date 1-16-15

Buyer: [Signature] Date 1-12-15 Buyer: [Signature] Date 1-12-15

Jim Davidson Realty, Bobby Abrusley, Assoc. Broker _____

Date: _____ +


This Contract is subject to and incorporates exhibit A attached hereto


EXHIBIT "A"
TO CONTRACT OF SALE BETWEEN
MARK A. WEISBART, TRUSTEE FOR AVERY DICKENS AND
WAYNON KEITH AND FRANCES THOMPSON RICHARDSON

1. This contract and Seller's obligations hereunder are expressly subject to the approval of the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division in that certain bankruptcy case styled *In re: Avery Dickens*, Case No. 12-41930 (the "Bankruptcy Court"). In the event the Bankruptcy Court does not approve this contract, Seller shall have no obligation to sell the subject property to Buyers.
2. Upon execution of this contract, Seller shall file an appropriate motion with the Bankruptcy Court seeking approval of this contract and authority to sell the subject property subject to any unpaid liens, claims, or encumbrances.
3. Seller makes no representations or warranties concerning the physical condition or habitability of the subject property or any improvements thereon. Buyers acknowledge that the subject property is being sold, transferred, assigned and/or conveyed "AS IS, WHERE IS" and agrees to take the subject property "AS IS, WHERE IS" and with all faults and subject to any condition which may exist without representation or warranty by Seller, including warranties of habitability, merchantability and fitness.
4. Seller and Buyers agree that the venue for any dispute related to this contract that may arise under or related to this contract shall be the Bankruptcy Court to the exclusion of any other court or procedure.
5. Closing shall occur within ten (10) days following Bankruptcy Court approval. If Bankruptcy Court approval is not obtained by February 2, 2015, the contract shall be of no force and effect, unless these dates are extended by agreement of the parties.
6. Seller shall be under no obligation to close this contract if the Court does not approve the sale, or Seller receives a bona fide offer in excess of the sales price prior to closing.
7. At closing Seller shall execute a quit claim or special warranty deed and Seller shall have no liability thereunder. Buyers shall bear all closing costs except broker's commission of six percent (6%) due Jim Davidson Realty which shall be paid by Seller from the sales proceeds.
8. All past due and current taxes or redemption fees owed to the Parish of Allen, Louisiana shall be the responsibility of the Buyers.

Exhibit "B"

BUYERS:


Waymon Keith


Frances Thompson Richardson

SELLER:

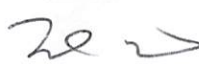

Mark A. Weisbart
Bankruptcy Trustee

Exhibit "B"

Label Matrix for local noticing
0540-4
Case 12-41930
Eastern District of Texas
Sherman
Fri Jan 16 14:12:05 CST 2015

5801 Preston Road Holdings, Limited Partners
c/o Richard H. London, Perkins Cole LLP
2001 Ross Ave., Suite 4225
Dallas, TX 75201-2904

A Action Realty
P.O. box 2761
Onalaska, TX 77360-2761

ASCAP
21678 Network Place
Chicago, IL 60673-1216

Bobby Abrusley
Jim Davidson Realty
P.O. Box 217
Oakdale, LA 71463-0217

Admiral Linan & Uniforms Service
2030 Kipling
Houston, TX 77098-1532

Ally Financial
c/o Ally Servicing LLC
P.O. Box 130424
Roseville, MN 55113-0004

American Express
PO Box 981540
El Paso, TX 79998-1540

American Express/Costco
PO Box 981540
El Paso, TX 79998-1540

Auborn Hager III
450 Tenth Circle North
Nashville, TN 37203-3313

Avery's Electrical Service, Inc.
PO Box 808
Oakdale, LA 71463-0808

Barksdale Federal Credit Union
2701 Village Lane
Bossier City, LA 71112-2319

Barksdale Federal Credit Union
P.O. Box 9
Barksdale AFB, LA 71110-0009

Beal Law Firm
c/o Eric D. Beal
2920 W. Southlake Blvd., Ste. 140
Southlake, TX 76092-6782

Bethpage Federal Credit Union
PO Box 127
Bethpage, NY 11714-0127

Capital One Bank
PO Box 30285
Salt Lake City, UT 84130-0285

Capital One Bank (USA) N.A.
PO Box 30285
Salt Lake City, UT 84130-0285

Capital One Bank (USA), N.A.
PO Box 71083
Charlotte, NC 28272-1083

Century Payments
PO Box 3429
Thousand Oaks CA 91359-0429

Citi Business
PO Box 6537
The Lakes, NV 88901-6537

Avery K. Dickens
7101 Chase Oaks Blvd.
Apt. 118
Plano, TX 75025-5909

Paula Dickens
The Law Office of Mark B. French
1901 Central Drive, Ste. 704
Bedford, TX 76021-5857

Direct TV
417 Bridge Street
Danville, VA 24541-1403

Direct TV
PO Box 5392
Miami, FL 33152-5392

Discover Financial Svcs., LLC
PO Box 15316
Wilmington, DE 19850-5316

Empire Banking Company LP
6440 N. Central Expwy., LB #18
Dallas TX 75206-4123

First Electronic Bank/Frys
280 W. 10200 S., Ste. 200
Sandy, UT 84070-4380

Mark B. French
1901 Central Drive
Suite 704
Bedford, TX 76021-5857

GE Capital Retail Bank
c/o Recovery Management Systems Corp
25 SE 2nd Ave Suite 1120
Miami FL 33131-1605

GE Money Bank/ Dillards
PO Box 103104
Roswell, GA 30076-9104

GE Money Bank/Sams Club Discover Card
PO Box 981400
El Paso, TX 79998-1400

GMAC Automotive Bank
PO Box 130424
Roseville, MN 55113-0004

Hillcrest Davidson & Assoc.
c/o Protect America Recovery
850 N. Dorothy Dr., Ste. 512
Richardson, TX 75081-2794

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

JC Penney
6501 Legacy Drive
Plano, TX 75024-3698

John E. Johnson
Jameson and Dunagan, P.C.
3890 W Northwest Highway
Suite 600
Dallas, TX 75220-5236

Kinser & Bates, L.L.P.
c/o Katherine Kinser
17103 Preston Road, Ste. 150
Dallas, TX 75248-1372

Kohl's
PO Box 2983
Milwaukee, WI 53201-2983

Joe Lozano
Buckley Madole, P.C.
9441 LBJ Frwy., Ste. 350
Dallas, TX 75243-4652

Christopher J. Moser
Quilling Selander Lownds Winslett Moser
2001 Bryan Street
Suite 1800
Dallas, TX 75201-3070

NY & Co.
PO Box 182273
Columbus, OH 43218-2273

Office of the U.S. Trustee
110 N. College Ave., Suite 300
Tyler, Texas 75702-7231

Old Navy
PO Box 530942
Atlanta, GA 30353-0942

Panola National Bank
1510 West Panola Street
Carthage, TX 75633-2350

Panola National Bank
c/o Kimberly M.J. Sims, Esq.
Riney Palter, PLLC
5949 Sherry Lane, Suite 1616
Dallas, TX 75225-6532

Paula Dickens
c/o Mark B. French
1901 Central Dr., Suite 704
Bedford, TX 76021-5857

John D. Penn
Perkins Coie LLP
500 N. Akard, Suite 3300
Dallas, TX 75201-3347

Quantum3 Group LLC as agent for
World Financial Network Bank
PO Box 788
Kirkland, WA 98083-0788

Red Ball Oxygen
PO Box 7316
Shreveport, LA 71137-7316

Rewards Network
2 N. Riverside Plaza, Suite 200
Chicago, IL 60606-2677

Sabine Holdings LP
312 West Sabine Street
Carthage, TX 75633-2519

Marcus Salitore
US Trustee Office
110 N. College Ave., Room 300
Tyler, TX 75702-7231

Robert A. Sherman
312 West Sabine Street
P.O. Box 351
Carthage, TX 75633-0351

Kimberly Marie Johnson Sims
PALTER STOKLEY SIMS WRIGHT PLLC
Preston Commons East
8115 Preston Road
Suite 600
Dallas, TX 75225-6342

Southwestern Bell Telephone Company
% AT&T Services, Inc
James Grudus, Esq.
One AT&T Way, Room 3A218
Bedminster, NJ 07921-2693

Southwestern Electric Power Co.
PO Box 24401
Canton, OH 44701-4401

Sparks Energy
PO Box 3015
Houston, TX 77253-3015

Gail Stock
Jameson and Dunagan, P.C.
3890 W. Northwest Highway, Ste. 550
Dallas, TX 75220-8118

Terminix Commercial
3900 Willow, Suite 130
Dallas, TX 75226-1201

Texas Cash Register
11332 Mathis Avenue
Dallas, TX 75229-3157

Texas Child Support Disbursement Unit
PO Box 659791
San Antonio, TX 78265-9791

U.S. Attorney General
Department of Justice
Main Justice Building
10th & Constitution Ave., NW
Washington, DC 20530-0001

UCR/Lake Side Market
7001 Preston Road, Suite 215
Dallas, TX 75205-1156

US Trustee
Office of the U.S. Trustee
110 N. College Ave.
Suite 300
Tyler, TX 75702-7231

John M. Vardeman
UST Office
110 N. College St., Suite 300
Tyler, TX 75702-7231

Verizon
PO Box 33079
St Petersburg, FL 33733-8079

Visa
PO Box 41769
Philadelphia, PA 19101-1769

WELLS FARGO BANK, N.A.
MAC: X7801-014
3476 Stateview Blvd
Fort Mill, SC 29715-7203

Mark A. Weisbart
The Law Office of Mark A. Weisbart
12770 Coit Road, Suite 541
Dallas, TX 75251-1366

Mark A. Weisbart
The Law Offices of Mark A. Weisbart
12770 Coit Road, Suite 541
Dallas, TX 75251-1366

Wells Fargo Bank, N.A.
Attention: Bankruptcy Department
MAC #D3347-014
3476 Stateview Blvd
Fort Mill, South Carolina 29715-7203

(p)WELLS FARGO BANK NA
WELLS FARGO HOME MORTGAGE AMERICAS SERVICING
ATTN BANKRUPTCY DEPT MAC X7801-014
3476 STATEVIEW BLVD
FORT MILL SC 29715-7203

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Wells Fargo Home Mortgage
8480 Stagecoach Circle
Frederick, MD 21701

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)5801 Preston Road Holdings, Limited Partne

(u)J.H. Amberson

(u)Mulloy & Co.

(u)Shattuck and Associates, Inc.

(u)Tina E. Tuccelli

(d)Mark A. Weisbart
The Law Offices of Mark A. Weisbart
12770 Coit Road, Suite 541
Dallas, TX 75251-1366

End of Label Matrix
Mailable recipients 71
Bypassed recipients 6
Total 77